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Attorneys for Plaintiff Phillip Kassai

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PHILLIP KASSAI,

Plaintiff,

v.

DRINKS AMERICA HOLDINGS, LTD.,

Defendant.

07 CV 5590 (RMB) (AJP)

**REPLY TO**  
**COUNTERCLAIMS**

Plaintiff Phillip Kassai ("Plaintiff" or "Kassai"), by his attorneys, Moskowitz & Book, LLP, as and for his reply to the counterclaims of Defendant Drinks America Holdings, Ltd. ("DKAM"), alleges as follows:

1. Admit the allegations contained in paragraph 62 of the Counterclaims.
2. Admit the allegations contained in paragraph 63 of the Counterclaims.
3. Admit the allegations contained in paragraph 64 of the Counterclaims.
4. Deny the allegations contained in paragraph 65 of the Counterclaims.
5. Deny the allegations contained in paragraph 66 of the Counterclaims.
6. Deny the allegations contained in paragraph 67 of the Counterclaims.
7. Deny the allegations contained in paragraph 68 of the Counterclaims.

8. In response to paragraph 69 of the Counterclaims, plaintiff repeats and realleges each and every response to the allegations contained in paragraphs 33 through 68 of the Counterclaims as if fully set forth herein.

9. Deny the allegations contained in paragraphs 70 and 71 of the Counterclaims.

10. In response to paragraph 72 of the Counterclaims, plaintiff repeats and realleges each and every response to the allegations contained in paragraphs 33 through 72 of the Counterclaims as if fully set forth herein.

11. Deny the allegations contained in paragraphs 73 and 74 of the Counterclaims.

12. In response to paragraph 75 of the Counterclaims, plaintiff repeats and realleges each and every response to the allegations contained in paragraphs 33 through 75 of the Counterclaims as if fully set forth herein.

13. Deny the allegations contained in paragraphs 76 and 77 of the Counterclaims.

14. In response to paragraph 78 of the Counterclaims, plaintiffs repeat and reallege each and every response to the allegations contained in paragraphs 33 through 77 of the Counterclaims as if fully set forth herein.

15. Deny the allegations contained in paragraph 79 of the Counterclaims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Defendant's claims are barred, in whole or in part, by principles of estoppel, waiver, and in pari delicto.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Defendant's claims are barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Defendant's claims are frivolous and without foundation in fact. Defendant's claims are being pursued in bad faith, for vexatious reasons and for purposes of harassing the plaintiff.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendant's sustained no damage, loss or injury as a result of any alleged act or failure to act on the part of the plaintiff.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The counterclaims must fail for a lack of sufficient detail.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff did not owe any duties to defendant.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

Defendant has failed to state fraud with sufficient particularity.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Defendant is barred by law from asserting both causes of action for breach of contract and fraud.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendant has not alleged justifiable reliance.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

Defendant has failed to meet the pleading requirements of FRCP Rule 9.

Dated: New York, New York  
September 12, 2007

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